



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-45/40732

PRELIMINARY RECITALS

Pursuant to a petition filed July 13, 1999, under Wis. Stat. § 49.45(5), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance (MA), a hearing was held on August 24, 1999, at Port Washington, Wisconsin. The record was held open with the petitioner's consent for 10 days for submission of expenses verification.

The issue for determination is whether a greater portion of the petitioner's income should be "allocated" (disregarded) under spousal impoverishment provisions.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Bureau of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Carolyn Godersky, ESS
Ozaukee County Dept. of Social Services
Courthouse
121 West Main Street
Port Washington WI 53074

EXAMINER:

Peter D. Kafkas, Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN 394-30-0427, CARES #7107203576) is a resident of Ozaukee County. He is certified for MA.

2. The petitioner has an ongoing MA case. On July 22, 1999, the county agency issued written notice to the petitioner advising that he would have to contribute \$829.57 toward his nursing home care expense (the balance is paid for by MA) effective September 1, 1999. That notice also advises the petitioner that \$1318.33 of his income would be disregarded in this nursing home liability computation because it was being “allocated” to his wife.
3. The petitioner is an institutionalized person and has a spouse residing in the community. She had gross monthly income of \$525.00 for the months relevant here. The Maximum Community Spouse Income Allocation is \$1,843.33. After subtracting (petitioner’s spouse) gross monthly income of \$525 from the Maximum Allocation, the Department determined that only \$1318.33 of (petitioner) income could be “allocated” to her (thereby bringing her income up to the \$1843.33 Maximum Allocation level).
4. The petitioner has gross monthly income of \$2338.90. After subtraction of a \$40 statutory personal allowance, the \$1318.33 spousal allocation, and a \$151 health insurance premium expense, the Department determined that the petitioner had \$829.57 available to contribute toward the cost of his nursing home care.
5. (petitioner’s spouse) has identified living expenses of \$2,336.73, which are payable monthly.
6. All of the expenses referred to in Finding #5 are reasonable, basic and necessary living expenses. Although (petitioner’s spouse) referred to small charge card debts with the Boston Store and Target, she did not verify these expenses. Therefore, they were not included in the living expenses totaled in Finding #5.

DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, that allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies only to institutionalized persons and their community spouses.

After an institutionalized person is found eligible, he may allocate some of his income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation of \$1,843.33 (\$1,768 in April). See *MA Handbook*, Appendix 23.6.0 (5-1-98). In this case, the income of the community spouse does not exceed \$1,843.33. The Department therefore allocated from (petitioner) net income the difference between the Maximum Allocation and (petitioner’s spouse) income (a difference of \$1,318.33).

(petitioner’s spouse) argues that she cannot get by on the \$1,843.33 Maximum Allocation. The county agency does not have discretion to allocate income to her that would cause her income plus allocation total to exceed \$1,843.33. However, I have some limited discretion and have determined that (petitioner’s spouse) income is short of what she needs to cover basic living expenses. After subtraction of the \$1,318.33 currently allocated to her, she is still short of the amount she needs to survive. I conclude that her Maximum Allocation must be raised to **\$2,336.73** to avert financial duress. An exceptional circumstance is present because (1) (petitioner’s spouse) incurs relatively high home repair costs, and (2) the couple incurred substantial charge card debt shortly before (petitioner) had his unexpected, disabling stroke. See s.49.455(8)(c), Wis. Stats. The acceptable monthly expenses identified by (petitioner’s spouse) are as follows:

Property tax	285.46
Water bill	52.25
Homeowner's insurance	8.25
Telephone	52.38
Natural gas	50.00
Electricity	50.16
Car insurance	48.87
Cable	43.89
Clothing	?
Husband's clothes	?
Food	?
Repairs/Maintenance	?
Mortgage	286.00
Wife's medicine	65.93
Haircuts/perm	?
Life insurance	23.65
Medical Insurance	174.00
Visa	25.00 (balance of \$188)
JC Penny	15.00 (balance of \$121)
Target	38.00 (balance of \$284)
Fashion Bug	12.25 (balance of \$245)
Walmart	20.00 (balance of \$171)
Sears	25.00 (balance of \$194)
Boston Store	10.00 (balance of \$113)
Menard's charge	10.00 (balance of \$330)
Steinhafel's	33.00 (balance of \$708)
TOTAL	2336.73 1329.09

(petitioner's spouse) does not have a mortgage expense, and did not pay income taxes last year.

In setting the Maximum Allocation at \$2,336.73, I accepted as accurate all of the budget numbers provided by (petitioner's spouse) in Exhibits 1, 2, and 4. I did not include (petitioner) \$151 health insurance premium because that amount is paid out of (petitioner) income and is already deducted in the care liability calculation.

CONCLUSIONS OF LAW

1. Due to exceptional circumstances, the petitioner's wife requires a \$2,336.73 Maximum Community Spouse Income Allocation.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be remanded to the county agency with instructions to increase (petitioner's spouse) Maximum Community Spouse Income Allocation to \$2,336.73 effective with the

September 1, 1999, cost of care liability determination. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on the Wisconsin Department of Health and Family Services, P.O. Box 7850, Madison, WI 53707-7850.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

Nancy J. Gagnon, Attorney
Division of Hearings and Appeals
079/

cc: OZAUKEE COUNTY DSS